Science, Service, Stewardship

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Review Authorities for Deep Draft Navigation Projects

Habitat

- **Magnuson-Stevens Act**
- **Clean Water Act**
- **Fish and Wildlife Coordination Act**
- **DOD/DOC Memorandum of Agreement 1992**

Protected Species

- **Endangered Species Act**
- **Marine Mammal Protection Act**

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NMFS Regional Structure

Headquarters

- NMFS Office of Habitat Conservation
- NMFS Office of Protected Resources
- Program Planning and Integration

Regional Office

- Habitat Conservation Division
- Protected Resources Division

Laws	NMFS	MMPA	ESA	EFH	Recc's

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Marine Mammals

Legislation

- **Marine Mammal Protection Act (MMPA) 1972**
- **Title IV of MMPA 1992 established Marine Health and Stranding Response Program (MMHSRP)**
- **Endangered Species Act**

Species Jurisdiction Under MMPA

- **NOAA Fisheries: Cetaceans, Pinnipeds (Except Walrus)**
- **USFWS: Manatees, Sea Otters, Polar Bears, Walrus**

Laws	NMFS	MMPA	ESA	EFH	Recc's

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Marine Mammal Protection Act

- **Prohibits taking marine mammals in US or on the high seas**
- **Prohibits possessing, importing, transporting, or selling marine mammals or their parts**
- **Requires consultations with FWS and NMFS if impacts on marine mammals are possible**

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Endangered Species Act

- **Promotes the conservation, management, and recovery of federally-listed threatened and endangered species**
- **Encourages other federal agencies to carry out programs for the conservation of threatened and endangered species**
- **Each federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of threatened and endangered species or result in destruction or adverse modification of critical habitat**
- **Federal agencies shall utilize their authorities to further the Act by carrying out programs for the conservation of threatened and endangered species, such as funding research or conservation programs, environmental programs, and terms and conditions of permits or licenses**

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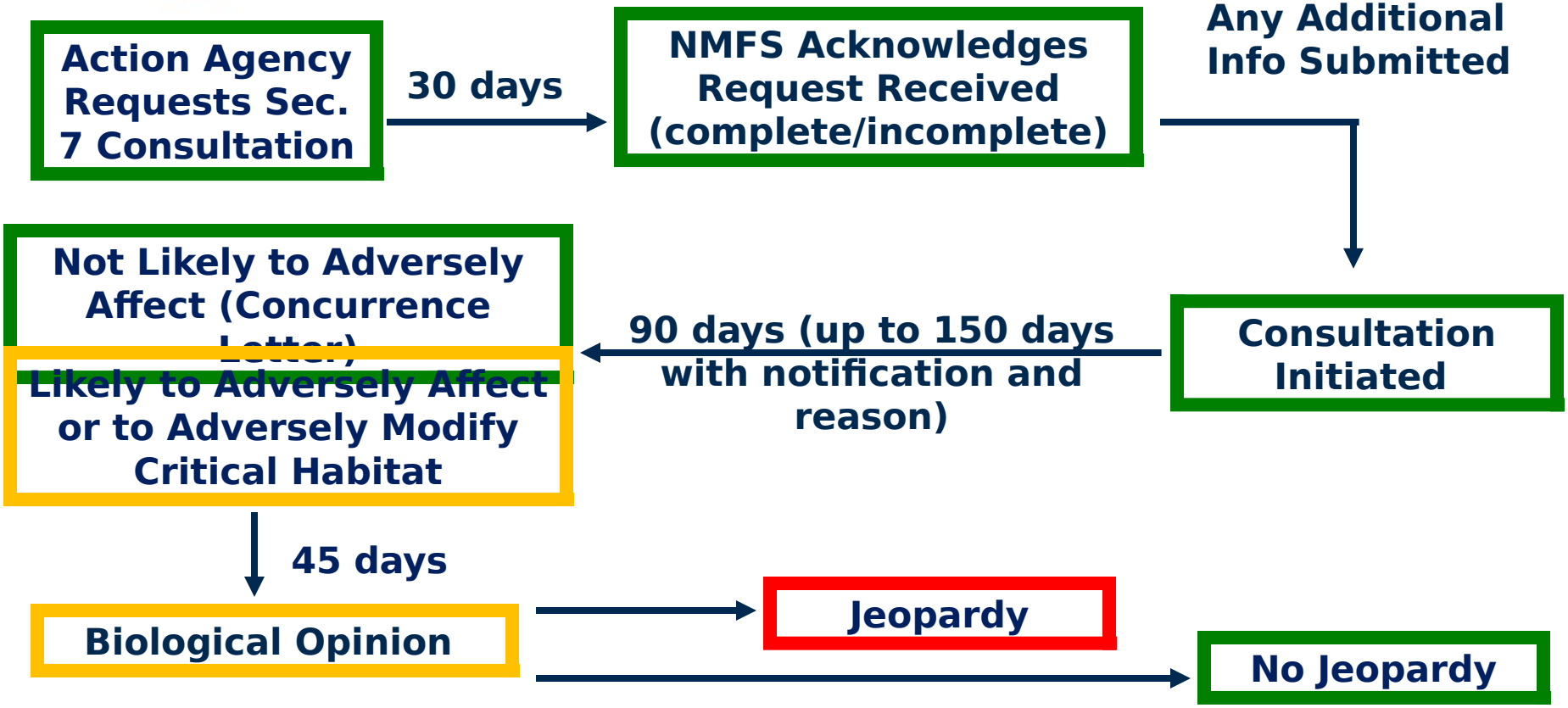
ESA Review Procedure


Action Agency Requests Sec. 7 Consultation
30 days
NMFS Acknowledges Request Received (complete/incomplete)
Any Additional Info Submitted
Consultation Initiated
90 days (up to 150 days with notification and reason)
Not Likely to Adversely Affect (Concurrence Letter)
Likely to Adversely Affect or to Adversely Modify Critical Habitat
45 days
Biological Opinion
Jeopardy
No Jeopardy

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Magnuson-Stevens Act and Essential Fish Habitat (EFH)

- **“One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats”**
- **EFH are “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity”**
- **Consultation requirements for federal agencies when an adverse impact to EFH is proposed**

50 CFR Part 600

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EFH Review Procedure

Main Points

- When practicable, add EFH consultation to existing interagency coordination mechanisms
- "Findings" have details for each USACE District
- EFH process fills a gap in the CWA process (*IMHO)

Before EFH Added To Magnuson-Stevens Act

CWA 404(q) Elevation (Yields ROD or SOF/Draft Permit)

Federal agencies must provide a detailed response within 30 days of receiving an EFH conservation recommendation And at least 10 days before final approval (Findings allow for interim responses)

Comment with No Response

Laws	NMFS	MMPA	ESA	EFH	Recc's

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EFH Review Procedure

Federal Action proposed that may adversely affect EFH

Public Notice…30 days
NEPA EIS/EA……45-60 days
EFH Assessment…30-60 days

NMFS provides EFH Conservation Recommendations to Agency

Agency has 30 days to provide a written response

Agency adopts Conservation Recommendations and provides letter
NMFS responds within 10 days
or
Agency does not adopt and sends substantive response as a letter
NMFS responds within 10 days
or
Agency provides interim response and proceeds to one of the two above actio

What is EFH?

- **Exists only for species that have a federal fishery management plan**
- **Designated through amendments to federal fishery management plans (individually or via a comprehensive amendment)**
- **Technical basis of each designation within report or comprehensive habitat/ecosystem plan**
- **Habitat Area of Particular Concern (HAPC) is a**

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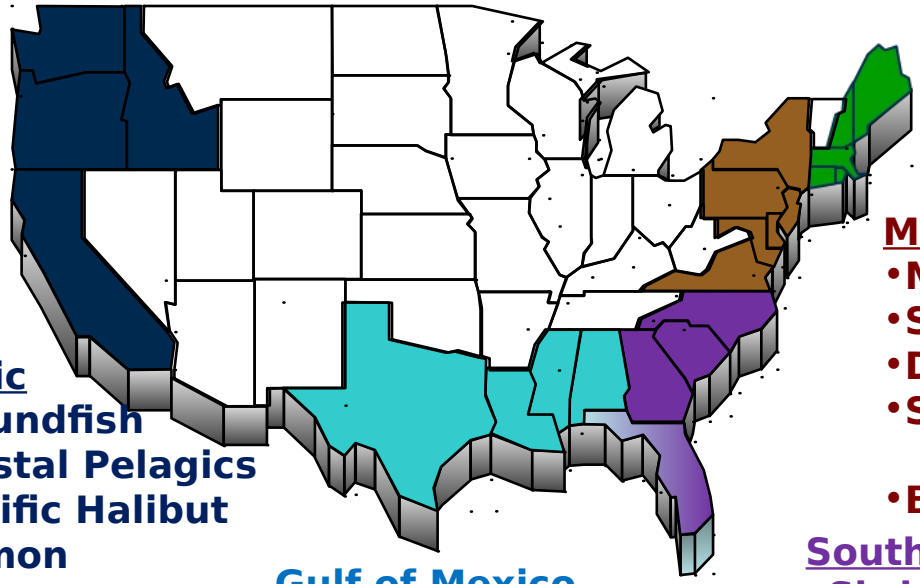
Fishery Management Plans by Council

North Pacific
- King & Tanner Crab
- Groundfish
- Scallop
- Salmon

West Pacific
- Groundfish
- Reef fish
- Inverts
- Coral

Caribbean
- Queen Conch
- Coral/Hardbottom
- Spiny Lobster
- Reef Fish

Secretarial
- Atlantic HMS
- Atlantic Billfish
- Pacific HMS



Pacific
- Groundfish
- Coastal Pelagics
- Pacific Halibut
- Salmon

Gulf of Mexico
- Spiny Lobster*
- Coastal Migratory Pelagics*
- Coral & Coral Reefs
- Stone Crab
- Shrimp
- Reef Fish Resources
- Red Drum

New England
- Monkfish
- Multispecies
- Sea Scallops
- Atlantic Salmon
- Atlantic Herring

Mid-Atlantic
- Mackerel, Squid, Butterf
- Surf Clam, Ocean Quaho
- Dogfish
- Summer Flounder, Scup, Black Sea Bass
- Bluefish

South Atlantic
- Shrimp
- Snapper/Grouper
- Coastal Migratory Pelagics*
- Coral/Hard Bottom
- Spiny Lobster*
- Golden Crab
- Dolphin/Wahoo
- Sargassum

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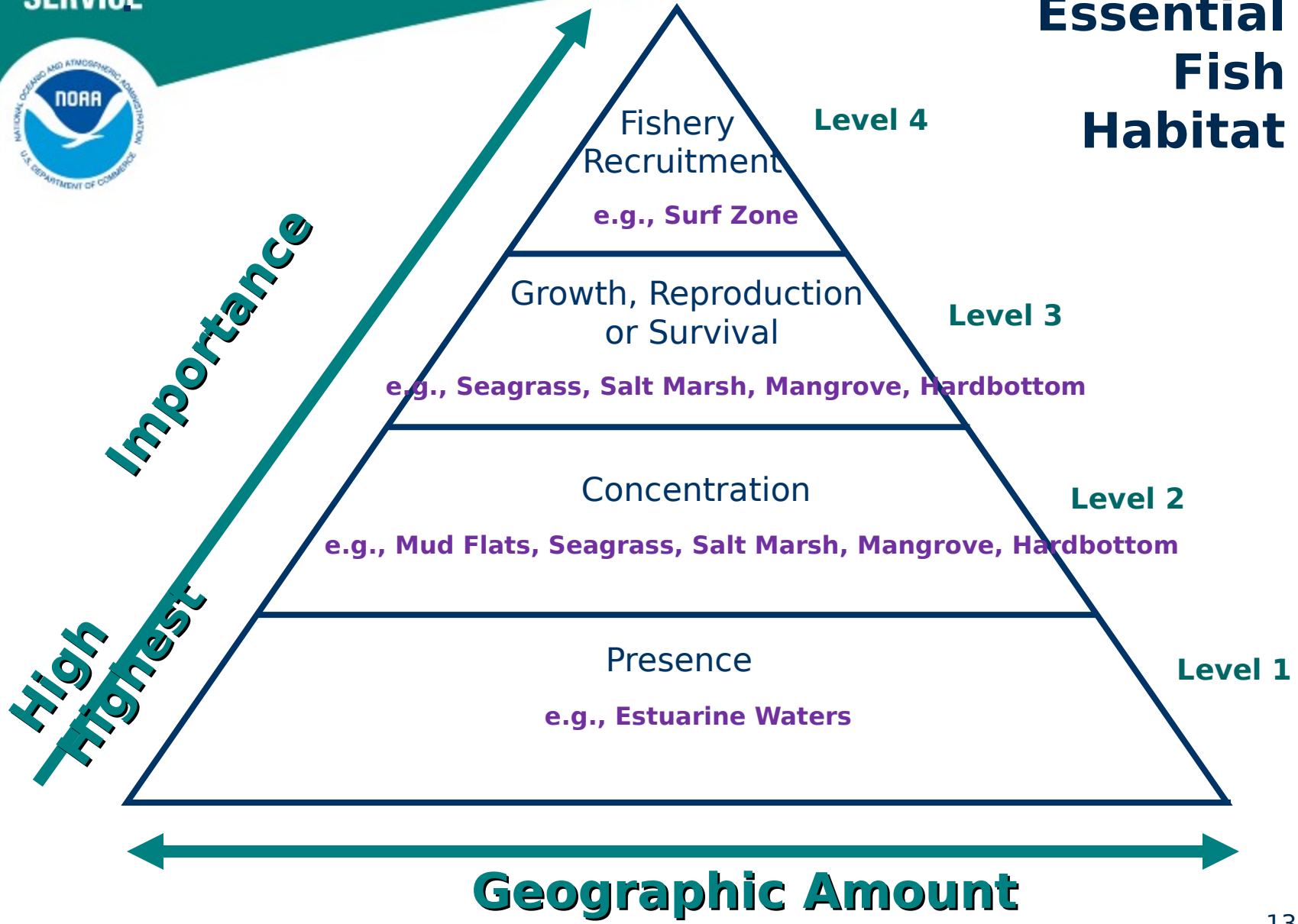
Essential Fish Habitat



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South Atlantic Fishery Management Council

EFH*

- Seagrass
- Mangroves
- Tidal Inlets
- Coral, hardbottom, worm reefs
- Palustrine & estuarine wetlands
- Oyster reefs
- Mud flats
- Sargassum
- Aquatic beds & macroalgae
- Artificial reefs

* See SAFMC (1998) for full list

Habitats Areas of Particular Concern (HAPCs)*

- Seagrass
- Mangroves
- Tidal Inlets
- Coral, hardbottom, worm reef
- Biscayne & Florida Bays
- Grays Reef NMS
- Florida Keys NMS
- Bogue Sound
- Charleston Bump
- Oculina Bank
- Ten Fathom Ledge

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Recommendations for Deep Draft Navigation Projects

- **Cooperating Agency Status (NEPA Regulations)**
  - **Designs and SOW's for biological surveys**
  - **Assessment methodologies**
  - **Peer review, reporting**
  - **EFH Assessment**
- **Chunk Project into Logical Units, Review Often**
- **Concurrence Memorandum for Each Chunk**
- **Reference Materials on Updated Project Website**

Laws	NMFS	MMPA	ESA	EFH	Recc's

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Summary of What Effects Mean for Section 7

May Affect…

a) "May affect, but is not likely to adversely affect"* - Effects are beneficial or are unlikely to have adverse affects on important biological behaviors or functions or critical habitat due to magnitude of the effects or agreed upon measures to avoid effects that may otherwise result in an adverse effect. **Informal consultation (requires NMFS concurrence)**

b) "May affect, and is likely to adversely affect"* - Take is expected. Effects are likely to have adverse affects on important biological behaviors, functions, or critical habitat. **Formal Consultation (Biological Opinion required)**